

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

DAVID NASH,

Civil No. 04-6291-PA

Plaintiff,

ORDER

v.

KEN LEWIS; et al.,

Defendants.

PANNER, Judge:

Magistrate Judge Cooney filed Findings and Recommendation (#166) which recommends that defendant Harris' amended motion for summary judgment be denied and that defendant Mercy Medical Center's motion for summary judgment be granted. Plaintiff has filed objections to Judge Cooney's recommendation that defendant Mercy Medical Center's motion be granted and that it be dismissed from the case. This matter is now before me for de novo review. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b).

Plaintiff objects on the grounds that the Magistrate Judge erred in summarily granting broad statutory immunity as to the state claims against Mercy, and in dismissing the constitutional claims against Mercy for lack of state action. I have

reviewed the record in light of plaintiff's objections and find that genuine issues of fact exist as to the issues raised. I note that defendant Asante dba Rogue Valley Medical Center has not contested plaintiff's complaint allegation that it is a state actor, and a determination on that issue has not yet been made by the Court.

Conclusion

Accordingly, the Magistrate Judge's Findings and Recommendation (#166) is adopted in part: the recommendation that defendant Harris' motion for summary judgment be denied is adopted, and the recommendation that defendant Mercy Medical Center's motion for summary judgment be granted is not adopted.

IT IS SO ORDERED.

DATED this ____30____ day of April, 2007.

____/s/ Owen M. Panner_____
OWEN M. PANNER
UNITED STATES DISTRICT JUDGE